



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 24, 2008

EX PARTE

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
In the Matter of Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
High Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board On Universal Service)	CC Docket No. 96-45
)	

Dear Ms. Dortch:

Pursuant to Commission rules, please include the attached Ex Parte Letter of James H. Cawley, Chairman of the Pennsylvania Public Utility Commission, in the corresponding Docket numbers of the above-referenced proceedings.

Sincerely Yours,

Joseph K. Witmer, Esq., Assistant Counsel
Pennsylvania Public Utility Commission

Enclosure

cc: Best Copy & Printing (via E-Mail)



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

JAMES H. CAWLEY
CHAIRMAN

October 24, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Developing a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92;
Universal Service Contribution Methodology, WC Docket No. 06-122; In the Matter of
High Cost Universal Service Support Methodology, WC Docket No. 05-337; In the
Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45.

EX PARTE SUBMISSION

VIA ELECTRONIC FILING

Dear Secretary Dortch:

I feel compelled to communicate to you a number of serious concerns that involve contemplated Federal Communications Commission actions on various subjects relating to inter-carrier compensation reform that potentially will take place on or about November 4, 2008. According to various press reports and a flurry of *ex parte* filings, these FCC actions have the potential to greatly hinder the ability of the states to regulate and oversee intrastate carrier access rates and intrastate retail rates, as well as the operation of intrastate universal service funds (USFs), and broadband deployment. The FCC should separately address the mandate from the U.S. Court of Appeals for the District of Columbia Circuit in the *Core* case, and issue a new comprehensive proposed rulemaking on the wider range of inter-carrier compensation reform.¹

As Chairman of the Pennsylvania Public Utility Commission, I am gravely concerned about the potential FCC *de jure* or *de facto* federal preemption of intrastate rate making authority that involves carrier access charges. As the Pa. PUC has repeatedly and formally commented to the FCC, such federal preemption is legally impermissible, and it is certain to cause harmful rate effects in Pennsylvania. We have undertaken considerable intrastate carrier access charge reforms in Pennsylvania with parallel increases in basic local exchange rates for both major and rural incumbent local exchange carriers (ILECs). During the 1997-2005 time frame the Pa. PUC

¹ *In re Core Communications, Inc.*, No. 07-1446 (D.C. Cir. July 8, 2008).

cumulatively reduced intrastate carrier access rates by approximately \$795.39 million.² We have also instituted a Pennsylvania-specific USF that has been in operation since 2001-2002. The local exchange rates for certain of the rural ILECs operating in Pennsylvania are at or approaching a state-specific benchmark of \$18 per month (this figure is *exclusive of* applicable federal subscriber line charges or SLCs, 911 fees, telecommunications relay service or TRS fees, etc.). In Pennsylvania the total intrastate access rate reforms and Pa. USF outlays amount to no less than one billion dollars during the 1997-2005 time period alone.³ Pennsylvania is also a *net contributor* state to the federal USF. Pennsylvania's annual net contribution to the federal USF exceeds \$130 million.⁴ Most of the major and rural ILECs in Pennsylvania operate under a price cap regime of regulation and have undertaken broadband deployment commitments that are mandated by state law. *See generally* 66 Pa. C.S. § 3011 *et seq.*

The exercise of the Pa. PUC's jurisdiction over regulated telecommunications utilities is based both on Pennsylvania *and* federal law. Legally impermissible *de jure* or *de facto* federal preemption of the Pa. PUC's ability to manage further intrastate carrier access charge reforms within Pennsylvania will lead to undesirable results for the end-user consumers of regulated telecommunications services. The Pa. PUC is obliged by Pennsylvania statute to make further intrastate carrier access charge reductions only on a "revenue-neutral basis." 66 Pa. C.S. § 3017(a). Federal preemption of intrastate carrier access rate making authority will create regulatory uncertainty, may have almost automatic and negative impacts for basic local exchange service rates, and – on top of the contemplated substantial increases in the federal SLCs – can have adverse effects on the availability of universal telephone service, especially for end-user consumers in the lower income brackets.

This situation will be further aggravated if the FCC were to proceed with preemption *and* the imposition of intrastate *interim* carrier access rates. Since this action will have *interlinked* effects with local exchange rates in Pennsylvania, the Pa. PUC will be left with the unfunded federal mandate to literally unscramble a complex regulatory "omelet" if and when such interim rates may be modified, e.g., after a successful court appeal. Further and significant regulatory uncertainty will ensue since there will not be a clear premise on whether Pennsylvania or federal law will govern the imposition of these interim rates and their subsequent modification.

These matters should not be deliberated and decided by the FCC on the basis of streaming *ex parte* submissions. I am aware of the mandate from the United States Court of Appeals for the District of Columbia Circuit in the *Core* case that obliges the FCC to act by November 5, 2008 on issues relating to intercarrier compensation for information service provider traffic. The FCC can act in response to the Court's mandate while proceeding to resolve the broader range of issues on intercarrier compensation in a more deliberate and transparent fashion through a new notice of proposed rulemaking. This will provide adequate

² *In re Developing a Unified Intercarrier Compensation Regime*, Docket No. CC 01-02, *Missoula Intercarrier Compensation Reform Plan*, FCC DA 06-150, The Comments of the Pennsylvania Public Utility Commission, Exhibit 2.

³ *Id.*, Comments at 4.

⁴ *In re High-Cost Universal Service Support*, Docket No. WC 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, The Comments of the Pennsylvania Public Utility Commission.

opportunity for all interested parties to provide well reasoned and documented comments. I stand ready to answer any questions that you may have in this matter.

Sincerely,

A handwritten signature in black ink, reading "James H. Cawley". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

James H. Cawley

cc: Chairman Kevin J. Martin, FCC, via electronic mail
Commissioner Michael J. Copps, FCC, via electronic mail
Commissioner Jonathan S. Adelstein, FCC, via electronic mail
Commissioner Deborah Taylor Tate, FCC, via electronic mail
Commissioner Robert M. McDowell, FCC, via electronic mail